

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
DOCKET NO. 1:18-cv-00077-FDW

MARCUS FREEMAN,)
Plaintiff,)
vs.)
ANDREW SAUL, *Commissioner of Social*)
Security)
Defendant)

ORDER

THIS MATTER is before the Court on Plaintiff's Motion for Attorney Fees pursuant to 42 U.S.C. § 406(b)(1) in the amount of \$3,500.00. (Doc. No. 17). Defendant does not oppose this motion.

When a plaintiff receives an award of attorney's fees under both the Equal Access to Justice Act (the "EAJA") and § 406(b), Plaintiff's attorney is required to repay the lesser award to the Plaintiff. Gisbrecht v. Barnhart, 535 U.S. 789, 796 (2002). However, this only occurs if the attorney "actually *receives*" the fees. Stephens ex rel. R.E. v. Astrue, 565 F.3d 131, 139 (4th Cir. 2009) (emphasis in original). According to Plaintiff's motion, the entirety of Plaintiff's EAJA award was seized by the government to pay Plaintiff's debts. (Doc. No. 17, p. 2). Since Plaintiff's attorney therefore did not receive any of the award under the EAJA, there is no double payment and no need to repay Plaintiff.

Pursuant to Comm'r of Soc. Sec. v. Ratliff, 560 U.S. 586 (2010), the fee awarded will first be used to offset any debt Plaintiff may owe to the United States. The Commissioner will determine whether Plaintiff owes a debt to the United States. If so, the debt will be satisfied first,

and if any funds remain they will be made payable to Plaintiff and mailed to Plaintiff's counsel. If the United States Department of the Treasury reports to the Commissioner that the Plaintiff does not owe a federal debt, the government will exercise its discretion and honor an assignment of fees under § 406(b), and pay the awarded fees directly to Plaintiff's Counsel.

IT IS THEREFORE ORDERED that Plaintiff's Motion for Attorney Fees under § 406(b), (Doc. No. 17), is GRANTED, and an award of attorney's fees in the amount of \$3,500.00 is hereby approved pursuant to 42 U.S.C. § 406(b).

IT IS SO ORDERED.

Signed: April 7, 2020


Frank D. Whitney
Chief United States District Judge